Filed May 29, 1998
JEANNE MILLSAPS, CLERK

By _____
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

In the Matter of the Petition of

RICHARD N. BROWN, Case No. SC 059273

Petitioner, ORDER

For Writ of Habeas Corpus.
_____/

A petition for Writ of Habeas Corpus, filed herein on April 15, 1998, contends that petitioner's sentence is invalid because the court failed to consider whether it would exercise the discretion provided by Penal Code §1385(a) to dismiss the prior(s) alleged under Penal Code §667(d) and/or 1170.12(b). The petition asks the court to reconsider the sentence and exercise its discretion to dismiss the prior(s) in view of the recent opinion by the California Supreme Court in *People v. Superior Court (Romero)* (1996) 13 C4th 497, as modified at 13 C4th 1016a.

Good cause appearing therefore, IT IS HEREBY ORDERED THAT:

/__/ The court extends the time in which it may deny the petition or issue the writ or an order to show cause to _____. The extension is required because

of the complexity of, and time required to review, the issues presented by the petition. Rule 260(f) of the California Rules of Court.

/__/ The People are ordered to show cause why the court should not exercise its discretion under Penal Code §1385(a) to strike the prior(s) alleged under Penal Code §667(d) and/or §1170.12(b).

/__/ The return shall be filed on or before _____.

/__/ Hearing on the order to show cause is set for _____.

/__/ _____ is appointed to represent petitioner and shall prepare an order to transport petitioner to court for the hearing on the order to show cause.

/XX/ The Petition for Writ of Habeas Corpus is denied for the following reason(s):

/__/ Relief remains available to petitioner by way of appeal.

/__/ The record establishes the court realized it possessed the discretion to strike the prior(s) without the concurrence of the prosecution and that the court did not do so.

/XX/ Although the record does not reflect the court realized it had the discretion to strike the prior(s) without the concurrence of the prosecution, the record does reflect the court clearly indicated it would not, in any

event, have exercised its discretion to strike the prior(s).

/__/ Petitioner was sentenced pursuant to a plea bargain. Once the court has accepted a negotiated plea, it lacks jurisdiction to alter the terms of the bargain so that it becomes more favorable to petitioner unless both parties to the bargain agree. The petition fails to make a prima facie showing that the People would be amenable to a reconsideration of the sentence.

/__/ The record establishes that it would be a manifest abuse of discretion for the court to have exercised its discretion under Penal Code §1385(a) to strike the prior(s). Therefore, reconsideration of the sentence to determine whether the court would, in light of the decision in *Romero*, exercise its discretion to strike said prior(s) would be an idle act.

Date: 5/29/98

Judge of the Superior Court